

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN COLLINS and COLLINS, COLLINS &
DONOGHUE, P.C.,

Plaintiffs,

v.

ORDER
08-CV-59S

MICHAEL B. FLYNN, *individually and as agent*
for CSX Transportation, Inc., FLYNN & ASSOCIATES,
ALAN HANSEN, *individually and as agent for CSX*
Transportation, Inc., and CSX TRANSPORTATION, INC.,

Defendants.

1. On January 23, 2008, Defendants removed this action from state court. Plaintiffs assert libel, libel per se, and intentional infliction of emotional distress claims against Defendants arising out of litigation pending in the United States District Court for the District of Massachusetts. On February 15, 2008, Plaintiffs filed a Motion to Remand. (Docket No. 5.) On February 29, 2008, Defendants filed a Motion to Dismiss (Docket No. 16), and alternatively, a Motion to Change Venue (Docket No. 18). This Court referred these motions to the Honorable Hugh B. Scott, United States Magistrate Judge, for the issuance of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) on March 11, 2008. (Docket No. 19.)

2. On July 21, 2008, Judge Scott filed a Report and Recommendation, in which he recommends that (1) Plaintiffs' Motion to Remand be denied; (2) Defendants' Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) be granted; and (3) that Defendants' Motion to Change Venue be denied as moot. (Docket No. 31.)

3. No objections to Judge Scott's Report and Recommendation were received from either party within ten days of the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has carefully reviewed the Report and Recommendation, as well as the pleadings and materials submitted by the parties, and will accept Judge Scott's recommendations.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 31) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Plaintiffs' Motion to Remand (Docket No. 5) is DENIED.

FURTHER, that Defendants' Motion to Dismiss under Rule 12(b)(6) (Docket No. 16) is GRANTED.

FURTHER, that Defendants' Motion to Change Venue (Docket No. 18) is DENIED as moot.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: August 15, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge